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CURRENT TOPICS

Mr. Fred Webster

WE record with great regret the death, on 20th August, of Mr. FRED WEBSTER at the early age of 57. Admitted a solicitor in 1920, he had achieved eminence successively in the local government service and later in the wider fields of public administration, and had served as a member of the Council of The Law Society for many years. At one time Deputy Town Clerk of Manchester, Mr. Webster in 1931 became Town Clerk of Kensington, an office which he held until his appointment in 1946 as a member of the Local Government Boundary Commission. On the setting up of the Lands Tribunal in November, 1949, he was appointed one of its original members, and he had since undertaken a full share of the heavy work now falling to the tribunal and had contributed notably to its firm establishment in the public confidence.

The Royal Commission on Divorce

THE names of the eighteen members of the Royal Commission to inquire into the law relating to marriage and divorce under the chairmanship of LORD MORTON OF HENRYTON, announced on 22nd August, include among their number: LORD KEITH, senator of the College of Justice in Scotland, chairman of the Scottish Central Probation Council, 1943-1949; Mr. Justice PEARCE, Judge of the High Court of Justice, Probate, Divorce and Admiralty Division; Sir FREDERICK BURROWS, chairman of the Agricultural Land Commission, Governor of Bengal, 1946-1947; Mr. DANIEL HOPKIN, Metropolitan Police magistrate; Mr. F. G. LAWRENCE, K.C., Recorder of Tenterden; Mr. D. H. MACE, solicitor, of Liverpool; Mr. JAMES WALKER, K.C., Sheriff of Inverness, Moray, Nairn and Ross and Cromarty, 1949, vice-dean of the Faculty of Advocates, 1948, and Mr. THOMAS YOUNG, solicitor, of Edinburgh, member of the Council of The Law Society of Scotland. Mr. K. H. S. EDWARDS will be secretary. Seven women are also named as members. Offices of the commission have not yet been set up; meanwhile any communications should be addressed to the Secretary, Royal Commission on Marriage and Divorce, c/o Room 93, H.M. Treasury, Great George Street, London, S.W.1.

Notices of Intended Prosecution

SINCE an article on this subject appeared at 94 SOL. J. 361, there have been three decisions of the High Court concerning s. 21 of the Road Traffic Act, 1930. It was stated, at p. 362 of the article, that the notice should be posted so as to reach the defendant's address, in the normal course of post, by last post on the fourteenth day, *Stanley v. Thomas* (1939), 83 SOL. J. 360, being cited as the authority for that proposition. The High Court have recently reaffirmed it in *Stewart v. Chapman* [1951] 1 All E.R. 613. The latter case now provides direct authority also for the opinion given at 94 Sol. J. 361 that the day of the offence is excluded in computing the period of fourteen days mentioned in s. 21. *Stanley's* case was further cited on p. 362 as an indirect authority for the proposition that the notice should not be sent to an

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address where it was known that the defendant would not be; *Holt v. Dyson* [1950] 2 All E.R. 840; 94 Sol. J. 743, now furnishes direct authority for it. There, the police had sent the notice to the defendant's home although they knew that she was in hospital; it was held that the police had failed to comply with s. 21 and the defendant could not be convicted. In *Rogerson v. Edwards* (1951), 95 Sol. J. 172, the owners of a vehicle were Greenwoods (Contractors), Ltd., Bury Road, Ramsey, and in the same road was another company, Greenwoods Transport, Ltd. A notice was sent addressed to "Messrs. Greenwoods, Bury Road, Ramsey." It was held that the burden of proof was on the defendant to show that the right company had not had the notice, that it could not be inferred that the notice was neither served on nor sent to the right company, and that the justices, in the absence of any such evidence from the defendant, were bound to hear the case. The case of *A.-G. (Eire) v. Carroll* [1949] Ir. R. 344, as set out in [1950] *Current Law Year Book* 3632, should be ignored in so far as it decides that the acts alleged to constitute dangerous driving should be given in the notice; English decisions are to the contrary.

The Tithe Act, 1951

THE Tithe Act, 1951, which comes into force on 1st September, should be noted by those concerned with conveyancing practice. It makes a number of amendments to the Act of 1936 and earlier Tithe Acts and in particular extends the duty under s. 18 (9) of the 1936 Act to furnish particulars to the Tithe Redemption Commission where an estate or interest in land in respect of which an annuity is charged is disposed of or created. This duty, which has hitherto rested only on the owner of the land, now falls also on any person by whom such an estate or interest is disposed of or created as well as on the owner (s. 5 of the Act of 1951), although discharge of the duty by one will operate to extinguish the liability of the other to do so. The obligation will thus, for example, now extend to a mortgagee exercising a power of sale. The form in which particulars have hitherto been furnished by owners was prescribed by the Redemption Annuities (Amendment) Rules, 1937, but these rules have now been revoked and replaced by the Tithe (Change of Ownership of Land) Rules, 1951 (S.I. 1951 No. 1504), which prescribe the new form of notice to be given to the Commission. It is understood, however, that particulars furnished on the old form will be accepted until the new forms are in general use. Some further notes on the subject of the 1951 Act and rules appear at p. 566, *post*.

Written Appeals

THOSE who attend assizes and quarter sessions are familiar with the long screeds painfully penned by the unfortunate persons prosecuted in those courts, in the hope that they will be read with favourable effect on the case they intend to put forward. In the Court of Criminal Appeal (OLIVER, CASSELS and SLADE, JJ.) on 22nd August (*The Times*, 23rd August) CASSELS, J., delivering a judgment dismissing an application for leave to appeal against a conviction, said that the court that morning had received a closely written communication from the applicant which extended to 13 pages. He thought that the time had arrived when the Prison Commissioners might take into serious consideration either the rationing of paper to those applicants who communicated with the court while waiting for the hearing of their cases or whether it was absolutely necessary that everything an appellant chose to put on paper must be forwarded to the court. They might also consider whether some control could not be exercised over those people who seemed to be

under the impression that if they could only flood the court with a deluge of writing they stood a chance of their appeals being allowed. The applicant in the present case must almost have achieved a record in the amount of rubbish which he had turned out and which the members of the court had been compelled to read. While experiencing much sympathy with learned judges who have to read and, sometimes, listen to irrelevant matter, one cannot help feeling considerably more sympathy for the unfortunate defendants who, untrained in the difficult art of distinguishing the relevant from the irrelevant, nevertheless do their best to avail themselves of what they firmly believe to be their right to put forward their case, whatever it may be, in answer to the charges preferred against them.

Advertisements

ADVERTISEMENTS which were in existence on the 7th January, 1947, enjoyed a measure of protection against the powers of planning authorities under the Town and Country Planning Act, 1947. This protection came to an end on the 1st August last, and authorities can now "challenge" these advertisements, i.e., require an application to be submitted for their continued existence; there is no need to remove them in the absence of action by the authority. The Ministry of Local Government and Planning have issued a circular, No. 52/51, to local authorities suggesting that they should only proceed gradually with challenging advertisements. The object of this request is to relieve the heavy pressure of work which would otherwise fall on advertising firms and also, no doubt, on the Ministry.

Advocacy Touches Bottom

JUDGES deprived of the power to flog tend to send away for long periods of time, and magistrates deprived of the power to birch tend to send persons away. It was, no doubt, the desire to keep his client's son at home that prompted a Liverpool solicitor last week to administer a sound spanking to a small boy outside the court in the presence of his mother and a detective. The boy was charged, and admitted stealing £5 worth of sweets from a warehouse. The solicitor told the court that he had just administered a punishment which they had no power to inflict and showed his reddened palm. The court, however, remained unmoved by this new form of advocacy, and sent the boy to a remand home for twenty-eight days.

Justices' Travelling Expenses

THE Justices of the Peace Act, 1949, s. 8, made provision for the payment to justices of the peace of their travelling expenses necessarily incurred in carrying out their duties. It is surprising that although the section was to be brought into effect on a date to be fixed by Order in Council, no Order in Council has been yet made, and, as Mr. RICHARD M. RENDEL pointed out in a letter to *The Times* of 17th August, 1951, justices still meet this expenditure out of their own pockets. County justices in many cases have to travel over 15 miles to petty sessions and over 30 to quarter sessions. Justices deal with 90 per cent. of the crime of the county and a mass of other work of a non-criminal nature, but they appear to be almost the last of the unpaid workers on whom the welfare state so largely depends to be paid their reasonable travelling expenses. Other workers receive, as Mr. Rendel wrote, subsistence, loss of earnings and other expenses in addition to travelling allowances. The matter is of such social importance and financial unimportance that one wonders what is the excuse for the long delay in bringing the section into operation.

Procedure**V—MORE ABOUT DECLARATIONS**

HOWEVER much laymen may regard it as a lawyer's trick to foster litigation, the chief principle exemplified in *Howard v. Pickford Tool Co., Ltd.* [1951] 1 K.B. 417, is of the very essence of English legal procedure and, indeed, of justice. It is that our courts will concern themselves only with a dispute which actually exists between parties who are before them. In former days they readily countenanced certain stereotyped fictions, but always ensured that notice was given to all real persons who might have a point of view to put. Even to-day friendly actions are possible, but the legal rights and obligations which are to be adjudicated upon must really exist even between friends. There must, as Viscount Simon, L.C., made clear in *Sun Life Assurance Co. of Canada v. Jervis* [1944] A.C. 111, be an existing *lis* between the parties who are before the court. So the House of Lords declined in that case to decide a question which was no longer of any financial interest to the respondent. He had received all that the judgment of the Court of Appeal had awarded him plus an undertaking that whatever the result of the higher appeal he would not have to return it. The appellants' motive was a desire to know the views of the ultimate appellate tribunal on a point which was of importance to them and to a large number of their policyholders. Neither the acquiescence of the respondent nor the fact that it was the order of the Court of Appeal giving leave to appeal which imposed the obligation to leave the effective position undisturbed entitled the appellants to prosecute the appeal in the circumstances.

Howard's case, *supra*, is a very striking example of the application of this principle, and it also illustrates further the scope of Ord. 25, r. 5, relating to declaratory orders. The plaintiff was employed by the defendant company as joint managing director for a period of six years. He brought an action against the company alleging that the defendants by the conduct of their chairman had rendered it impossible for the plaintiff to perform his part of the agreement and had shown that they did not intend any longer to be bound by it. His claim was for damages. The cardinal feature of the case emerged when the matter came before the master: then it was proved that the plaintiff was in fact still acting as managing director under the agreement. There could therefore be no claim for damages. However, an amendment was allowed by the judge in chambers whereby instead of the damages claim there was substituted a claim for a declaration that the conduct complained of was such as to constitute repudiation by the defendant company of the contract, and that the plaintiff was excused further performance of his obligations under the contract.

But the Court of Appeal was astute to notice that the plaintiff had not accepted the repudiation which he alleged. "An unaccepted repudiation," said Asquith, L.J., as he then was, "is a thing writ in water and of no value to anybody." The fact that the plaintiff was continuing to perform his side of the contract rendered the question whether or not the chairman's alleged conduct amounted to a repudiation a purely academic one. Order 25, r. 5, should not be used so as to require the court to answer academic questions.

We have been emphasising perhaps the limitations of this rule. Nevertheless the value of the jurisdiction to make declaratory judgments in appropriate cases is considerable, and there are even cases where a party who maintains that he is no longer bound by a contract may properly seek a declaration to that effect. It may well be the most prudent

course. Evershed, M.R., instances ([1951] 1 K.B., at p. 420) *Société Maritime et Commerciale v. Venus Steam Shipping Co., Ltd.* (1904), 9 Com. Cas. 289. There the plaintiffs would, if a certain written contract were still binding on them in the light of events, have been bound to load a ship. They refused to load, but, more, they did not choose to await the enemy's fire. They attacked, suing for a declaration that they were entitled so to refuse. And they succeeded. Moreover, as the later case of *Spettabile Consorzio Veneziano, etc. v. Northumberland Shipbuilding Co., Ltd.* (1919), 121 L.T. 628, shows, even had they lost, their action in issuing proceedings would not have been taken as a repudiation.

Order 25, r. 5, is not the only enabling authority for the making of declaratory orders. Order 54A, r. 1, empowers any Division of the High Court to determine on originating summons any question of construction arising under a deed, will or other written instrument and to declare the rights of the persons interested. Again, s. 188 of the Judicature Act, 1925, authorised the making of a decree declaring that a petitioner is the legitimate child of his parents, and this was extended by s. 2 (1) (as amended) of the Legitimacy Act, 1926, to the case of a person desiring to claim that he or his parent or any remoter ancestor became legitimated. Both these provisions are now enacted in s. 17 of the Matrimonial Causes Act, 1950. *Knowles v. A.-G.* [1951] P. 54 is concerned with this subject-matter, and since it gathers up a few threads from the seams of this article and the previous one, it may well detain us for a moment's discussion of its procedural aspects.

The case resembled *Guaranty Trust Co. of New York v. Hannay* [1915] 2 K.B. 536 (see p. 537, *ante*) in that the motive for the proceedings was indirect. The petitioner, who was himself plainly legitimate, was engaged in some litigation in France in which it was essential for him to be able to convince the French courts of the legitimacy of two of his uncles. Neither uncle had been born in wedlock, but on the other hand their parents had subsequently married, and both uncles had survived the coming into force on the 1st January, 1927, of the Legitimacy Act, so that both were, by English law, automatically legitimated. Willmer, J., was satisfied as to this. It appeared, however, that the French courts had taken the view in one action, and seemed likely to follow it in another, that a specific declaration of legitimation of the uncles was necessary in order that they should be regarded as legitimate. They had originally fallen into this error in the early 1940's when England and France were cut off from each other, and the petitioner sought to undo the mischief by obtaining from the English court a declaration in respect of each uncle.

The claim was put under s. 2 of the Legitimacy Act, under Ord. 25, r. 5, and under Ord. 34, r. 1. The Act, however, is confined to the declarations concerning the petitioner, his parent or "any remoter ancestor," and Willmer, J., came to the conclusion that an uncle was not an ancestor within the section. Order 34, r. 1, since it contemplates the isolation from the remainder of the matters in issue of the question of law raised by the case, may lead to an order which is equivalent to a declaration of the parties' rights (cf. *Re Cane* (1890), 63 L.T. 746, cited at p. 537, *ante*). But that rule, as we have seen, presupposes a special case in writing or at least the makeshift use of counsel's opening as an agreed statement, as in *Jones v. Waring & Gillow, Ltd.* [1925] 2 K.B. 625. In any case agreement with the other side is essential, and that was lacking in the present case. In

deciding that Ord. 25, r. 5, was not applicable to declarations of legitimacy or legitimation, Willmer, J., followed authority, first making the cogent observation that if it were otherwise s. 2 of the 1926 Act would have been unnecessary.

Opportunity for the exercise of a talent for the higher strategy, as displayed in these cases involving simultaneous

litigation in more than one country, is likely to come but rarely to the individual practitioner. There is every reason, however, why he should be alert to seize the tactical initiative for his client whenever the rules of court allow. To that end there is no better preparation than a thorough knowledge of the rules.

J. F. J.

A Conveyancer's Diary

ATTORNMENT CLAUSES AGAIN

IN *Portman Building Society v. Young* (reported on appeal at p. 61, *ante*) it was suggested that an attornment clause would, in suitable circumstances, raise a protected tenancy within the meaning of the Rent Acts between mortgagee and mortgagor so as to prevent the former from obtaining possession of the mortgaged premises otherwise than on the footing of such a tenancy. That suggestion did not commend itself to the Court of Appeal, for reasons to which I will again refer briefly later in this article. Now in *Steyning and Littlehampton Building Society v. Wilson*, p. 514, *ante*, a mortgagor has argued that a notice to determine the tenancy created by an attornment clause which was served upon him in accordance with the terms of such a clause was ineffective because the premises comprised agricultural land and the notice did not comply with the provisions of the Agricultural Holdings Act, 1948. The summons in this case was heard by Danckwerts, J. (who heard *Young's* case at first instance), and his decision is interesting not only for itself but also for some comments which it contains on *Young's* case.

It will be recalled that in *Young's* case the attornment clause provided that the mortgagor attorned tenant of the building society at a monthly rent which corresponded with the monthly instalments payable by the mortgagor to the society by way of repayments of principal and payment of interest, and it was provided that such rent should be applied in or towards satisfaction of such instalments. The attornment clause also contained a proviso to the effect that the society might at any time, without giving previous notice in that behalf, determine the tenancy created by the mortgagor's attornment. The mortgagor having fallen into arrears with his instalments, the society took out an originating summons for possession under R.S.C., Ord. 55, r. 5A. No notice to determine the tenancy was given. The master who heard the summons took the objection that the Rent Acts might apply to the attornment tenancy and adjourned the matter to the judge. The judge (Danckwerts, J.) upheld the master's objection, and although possession was given to the society on the ground of the mortgagor's non-payment of "rent," the society was deprived of its costs under s. 17 (2) of the Rent, etc., Restrictions Act, 1920. The society appealed, and on appeal the Court of Appeal held, in effect, that in the circumstances there was, after the service of the summons, no landlord-tenant relationship between the parties, and that the Rent Acts did not, therefore, apply to prevent the society from obtaining possession purely *qua* mortgagee. I attempted to analyse this decision in an article at p. 219, *ante*, under the heading "Utility of Attornment Clauses" (the burden of which, however, was the inutility of such clauses), soon after the report of the case became available.

The Court of Appeal's decision in *Young's* case was not altogether an easy one, and it is interesting to have the comments of Danckwerts, J., on it. In the full report of the present case at [1951] 2 All E.R. 452, he makes the following observations (pp. 454-5) on the earlier case: "On

an appeal by the building society, the Court of Appeal took the view that the protection of the Rent Restrictions Acts, which I thought applied notwithstanding the argument that they had no application to mortgage transactions, did not apply because the relationship created by the attornment had come to an end. Sir Raymond Evershed, M.R., said: 'Once the contractual situation created by the attornment clause is gone, it is impossible with any sense of the meaning of words to refer to [the] relationship [of the parties] as that of landlord and tenant.' On that ground the Court of Appeal decided that there was no relationship of landlord and tenant and that the Rent Restrictions Acts had no application. I feel somewhat puzzled by the decision, because one cannot help noticing that in many cases in which the Rent Restrictions Acts are applied the contractual relationship of landlord and tenant has gone, either by the expiration of the term of the tenancy or by the giving of notice to quit or for some other reason, and the tenant is protected by the provisions of those Acts, which create what is sometimes called a statutory tenancy. It is clear that the decision of the Court of Appeal in *Portman Building Society v. Young* was based entirely on the view that, when the matter came before the court, there was no relationship of landlord and tenant between the parties."

These observations are a powerful reinforcement of the warning which I uttered when I wrote of that case last, that the decision of the Court of Appeal might not, perhaps, find support if the matter should ever be taken to the House of Lords. The particular danger which arose in *Young's* case was due, of course, to the fact that the substantial rent reserved upon the attornment in that case *prima facie* placed the tenancy thereby created within the Rent Acts; no such danger can arise where the rent reserved upon an attornment is a purely nominal rent. But with that qualification, attornment clauses still seem to me, as they do to many other writers on conveyancing topics, to be at the best useless, at the worst a positive source of danger to a mortgagee.

The attornment clause in *Steyning and Littlehampton Building Society v. Wilson* did, in fact, reserve a nominal rent. But the really important provision in this case was to the effect that the society might at any time, by giving at least three days' notice in writing to the borrower of its intention so to do, determine the tenancy created by the attornment clause. The society, pursuant to this provision, by letter addressed to the mortgagor purported to determine the attornment tenancy, and in the course of subsequent proceedings for possession under R.S.C., Ord. 55, r. 5A, by the society, it was argued on behalf of the mortgagor that as the premises consisted of an agricultural holding s. 23 (1) of the Agricultural Holdings Act, 1948 (which in effect provides that, notwithstanding any provisions to the contrary in the contract of tenancy, a tenancy of an agricultural holding cannot be terminated by notice to quit before the expiration of twelve months from the end of the then current year of tenancy), invalidated the society's notice. The

objection that s. 23 (1) did not apply to a tenancy at will (such as had been created by the attornment in this case) was met with a reference to s. 2 (1) of the Act of 1948, the broad effect of which is to prevent the creation of a tenancy of agricultural land for a lesser interest than that of a tenancy from year to year, and to transform any tenancy of agricultural land made for a lesser period into a tenancy from year to year.

Danckwerts, J., held that the agricultural holdings legislation could never have been intended to apply to anything other than true transactions between landlord and tenant in respect of agricultural holdings; and in this view he was supported by the form of the attornment clause in the case which, unlike that in *Young's* case, reserved only a nominal rent. The learned judge also pointed to the absurdity of regarding what was in truth only a lending and borrowing transaction as a contract of tenancy within the Act of 1948 which, read together with the Agriculture Act, 1947, contains elaborate provisions for securing good management of agricultural land on the part of owners and good husbandry on the part of tenants.

This was a common-sense decision, amply supported by the reasoning of the Court of Appeal in the analogous *Young's* case, while the authority of that decision remains unimpaired. But if *Young's* case should be overruled, the foundation of the decision in *Wilson's* case must be shaken, and it is, therefore, not a completely academic exercise to work out another possible line of reasoning by which the same result could be reached in similar, if not precisely the same,

circumstances. The attornment clause in *Wilson's* case provided for termination of the attornment tenancy by notice to quit, but many forms of attornment clause, as for example that considered in *Young's* case, provide simply that the mortgagee may at any time, without giving to the mortgagor any previous notice to quit, enter upon the mortgaged premises and determine the tenancy created by the attornment. In the case of a mortgage containing such a clause it is well settled that, if proceedings are taken by the mortgagee by summons, as soon as the summons is issued the mortgagee is deemed to have re-entered and the tenancy becomes a tenancy at will, and (at the latest) as soon as the summons is heard the tenancy at will is determined (*Woolwich Equitable Building Society v. Preston* [1938] Ch. 129). Now s. 23 (1) of the Agricultural Holdings Act, 1948, deals only with notices to quit. It provides that a notice to quit shall be invalid if it does not comply with certain provisions. This subsection does not deal with the termination of tenancies otherwise than by notice to quit. If, therefore, a tenancy can be determined (as an attornment tenancy can be determined, in the absence of express provision for the giving of notice) without the service of a notice to quit, s. 23 (1) does not apply, and the larger question upon which the decision in *Wilson's* case turned—the applicability, on general considerations, of the agricultural holdings legislation to mortgages regarded purely as lending transactions—does not arise. But I still think that the easiest way of escaping from any of the consequences of attornment clauses is to deal with the trouble at its source.

"ABC"

Landlord and Tenant Notebook

CONTROL AND EFFECT OF EVIDENCE

In two recent cases the Court of Appeal have had to consider the nature of the legal relationship existing between an owner of controlled premises and a person occupying those premises. In the one, *Steel v. Cockcroft* [1951] 2 All E.R. 175; 95 Sol. J. 368 (C.A.), the question was whether a statutory tenancy had, as the result of an agreement, been replaced by a contractual tenancy. In the other, *Marcroft Wagons, Ltd. v. Smith* [1951] 2 All E.R. 271; 95 Sol. J. 501 (C.A.), the question was whether any tenancy had been created. In the first-mentioned case, no older authorities were cited; in the other, ten decisions dealing with this particular point were referred to.

The defendant in *Steel v. Cockcroft* was the son of a widow who had become statutory tenant of the premises claimed on the death of her husband; she had died, and in order to make good a claim to the premises himself, he sought to show that her statutory tenancy had at one time ceased and that a contractual one had then come into being. (There is no second transmission on death: *Pain v. Cobb* (1931), 146 L.T. 12.) He was able to produce a letter written by the plaintiff landlords to his mother—at least, a copy of a circular sent to all their tenants, beginning with "Dear Sir or Madam"—some four years after the death of her husband in which they said (i) that they had decided, because of difficulties about the amount of rates, that tenants should thenceforth be allowed to pay their general rates direct; (ii) that her rent would accordingly be reduced by an amount specified; (iii) that in order legally to conform with the above they begged to give her notice to terminate her tenancy on a date named and (iv) that if she remained after that date it would be assumed that she had agreed to the above. The

last item, of course, ignores the "quiescence is not acquiescence" principle brought home to most law students in the very first lecture on the law of contracts, being illustrated by *Felthouse v. Bindley* (1862), 11 C.B. (N.S.) 869 ("If I hear no more about him, I consider the horse mine at that price"); but as the defendant's mother not only remained but paid the reduced figure and paid the rates direct, there was conduct to evidence her acceptance of "the above." The last item but one is also based on a fallacy, no notice to quit being necessary to determine a statutory tenancy. Still, there was material on which to base an argument that an agreement of tenancy had been negotiated. The county court judge, however, declined to infer that the intention of the parties had been to end the statutory tenancy and create a new, contractual tenancy; and his view was upheld by the Court of Appeal. The agreement arrived at, it was held, was one by which, for their mutual convenience, the method of payment of rates was to be varied; and the provisions of s. 2 of the Increase of Rent, etc., Restrictions Act, 1920, relating to increases in rent and transfer of liabilities showed that the Legislature approved the variation; this being so, the fact that the parties had decided to take advantage of those provisions did not mean that they were intending to determine the existing relationship and create one of a new kind.

In *Marcroft Wagons, Ltd. v. Smith* what happened was that a tenant of the plaintiffs died a statutory tenant in 1938, when his widow became statutory tenant by reason of his death; she died in 1950, and the defendant, a daughter who had lived on the premises all her life (i.e., since 1901), then went round and saw a representative of the plaintiffs and

asked that her name be put in the rent book and "the" tenancy be transferred to her. He said he was not prepared to put her in that position and that the house was required for an employee of his principals. But he also (a) said that he did not wish to disturb her and (b) accepted two weeks' "rent." And the plaintiffs went on accepting such payments for some six months before they demanded, or at all events sued for, possession. When she laid claim to a contractual, protected tenancy, they may well have felt that they had nourished a viper in their bosom; and subsequently Evershed, M.R., was to deplore the possibility that indulgence on a bereavement might produce a relationship under which it would be impossible for a landlord to recover what he could have recovered but for such indulgence.

The county court judge found, indeed, that the defendant had had merely permissive occupation, and he, too, was upheld by the Court of Appeal, where the length of time that the arrangement had lasted was considered the most serious obstacle confronting the plaintiffs. It is not necessary to make reference to all the authorities cited, the earliest of which was *Doe d. Cheny v. Batten* (1775), 1 Cowp. 243, in which it was held that acceptance of "rent" after expiry of notice to quit was not *conclusive* evidence of a new tenancy ("The question, therefore, is, *quo animo* the rent was received, and what the real intention of both parties was": Mansfield, C.J.); what is welcome in the new authority is a short but lucid statement by Evershed, M.R., describing the effect of rent restriction legislation on the presumption that exclusive possession plus payment created a tenancy. For in judging the inference to be drawn it was vital to bear in mind the background of that legislation, limiting a landlord's rights to a right to go to the county court for an order for possession.

If I may mention two cases which were not among those cited, I think that the decision in *Davies v. Bristow, Penrhos College v. Butler* [1920] 3 K.B. 428 was a useful early authority on this question of inference in the case of control. Landlords who had accepted "rent" from tenants of controlled properties after the (contractual) tenancies had come to an end were held not to have put themselves out of court; tenants hold statutory tenancies on condition that they pay the rents, and if proceedings are taken a landlord cannot know whether he is entitled to rent or to mesne profits until judgment is given. The other is *Morrison v. Jacobs* [1945] K.B. 577 (C.A.), in which the question was whether the tenant was holding over as a tenant from year to year in the "ordinary" way, or had become a statutory tenant, after the expiration of a fixed term. The tenancy had begun in June, 1939, the house being outside the then Acts; it was for a year, at an annual rent but payable weekly, and there was a tenant's right to renew for a further three years, which (the court assumed) was exercised, so that the term ended in June, 1943. The property had then been controlled for close on four years and, said Scott, L.J., the landlord "quite naturally, knowing that the house was under the Rent Restrictions Acts, took the rent" and "to hold that in the circumstances prevailing under the Rent Restrictions Acts any such inference of consent in fact [of a new tenancy agreement from year to year] and a *consensus ad idem* between the two parties on the terms of the new agreement was legitimate because before those Acts in certain circumstances such an inference could be drawn, I think is erroneous." This, I submit, indicates the fallacies underlying the arguments advanced for both the tenants or defendants concerned in the two recent cases.

R. B.

PRACTICAL CONVEYANCING—XXXVIII

EXCHANGE OF CONTROLLED-PRICE HOUSES

As a result of the notes on this subject which appeared at p. 480, *ante*, a reader has forwarded some comments on a possible alternative procedure which are so interesting that they are quoted in full. They are as follows:—

"Although the exchange of the fee simple of a price-controlled house for the fee simple of an uncontrolled house may be prohibited by s. 7 of the Building Materials and Housing Act, 1945, if the value of the uncontrolled house exceeds that of the price-controlled house, yet the owners of the two houses can exchange them by letting to each other without committing any offence, provided that the following rules are observed:—

(a) The owner of the price-controlled house must let it to the owner of the uncontrolled house at a rent *not exceeding* that fixed by the local authority in the building licence.

(b) The owner of the uncontrolled house must let it to the owner of the price-controlled house at a rental *not less* than the full recoverable rent.

If, as is more than probable, the uncontrolled house is subject to the Rent Acts then the full recoverable rent is easy of ascertainment. If the house has never been let the rent can be fixed by a tribunal under the Landlord and Tenant (Rent Control) Act, 1949. If the uncontrolled house is not subject to the Rent Acts then a valuation must be made.

The important thing to remember is that the owner of the price-controlled house must not attempt to secure any additional benefit for himself whether by length of lease,

incidence of repairs or otherwise. He is prohibited from charging more than the maximum rent fixed by the local authority, but he must be careful to ensure that he pays no less than the full recoverable rent for the property which he takes in exchange. If he is careful to do this, then, although the hiring by him of the uncontrolled house is undoubtedly an associated transaction within the meaning of s. 7 (5) of the Act of 1945, there will be no extra consideration for the letting of the price-controlled house which the court can value in terms of money under s. 7 (4) of the same Act, because the owner of the price-controlled house will be paying the very maximum for the uncontrolled house. There will, therefore, plainly be no increased consideration under s. 7 (5) nor anything to apportion under s. 7 (6)."

This is a very well reasoned argument and it deserves the consideration of solicitors concerned with price-controlled houses. It is unlikely that the non-price-controlled house would not be subject to the Rent Acts and so the position in this eventuality need not concern us. Where, however, the house has never been let, but would fall within the Rent Acts when let, the position may be rather doubtful. It is quite correct to say that the rent can be fixed by the rent tribunal under the Landlord and Tenant (Rent Control) Act, 1949, but no application can be made to the tribunal until a standard rent has been fixed in the normal way (see, for instance, Megarry, *The Rent Acts*, 6th ed., p. 251). Therefore, until a tenancy has been created at a rent fixed by the parties, the protection of a decision of the tribunal cannot be obtained. It may be that some tribunals will express informal opinions of proper rents before a tenancy is created, but one would feel very doubtful about relying on them. Consequently,

before application is made to the tribunal the rent must be the highest obtainable on a letting of the non-price-controlled house without regard to the associated letting of the price-controlled house. The case where the non-price-controlled house (that is, the house not subject to building licence) has previously been let, and so has a standard rent, seems simple. No increased rent can be charged and so it is easy to show what is the maximum benefit obtainable from a letting.

The first problem is whether the lessor of the price-controlled house pays full value for the tenancy he acquires in the other house. In the words of s. 7 (5), there will be an offence if "the benefits secured by [the lease of the non-price-controlled house] to the . . . lessor [that is, of the price-controlled house] exceed what they would have been if the [controlled-price] house had not been . . . let for the consideration for which it was in fact . . . let." One might argue that the lessor of the price-controlled house would never have been granted a lease of the other house if the transactions had not been associated. Nevertheless, the agreement to enter into an associated transaction which would not have been made in other circumstances does not seem to confer an additional benefit contrary to s. 7 (5) if every possible benefit has been taken from the associated transaction.

In spite of this, the present writer is not satisfied that the suggested procedure could be adopted without risk of committing a criminal offence. Under s. 7 (4), where a price-controlled house is let for a consideration which consists partly of something other than the payment of a money rent, and it appears to the court that the whole consideration is capable of being expressed in terms of money, the court must assess the total value of the consideration upon the assumption that the transaction is carried out in accordance with its terms, and must determine a rent representing a benefit equal to such total value. The rent so determined is deemed to be the rent at which the price-controlled house was let, and so, if it exceeds the rent fixed by the licence, an offence is

committed. It can be argued that on adoption of our correspondent's suggestion the consideration for the letting of the price-controlled house consists partly of something other than the payment of money, namely, the grant of the tenancy of the non-price-controlled house. A court may decide that such a grant has a value capable of being expressed in terms of money where an economic rent would exceed the restricted rent under the Rent Restrictions Acts or the rent fixed by the rent tribunal. It is common knowledge that houses can now be sold with vacant possession at prices so high that it is quite uneconomic to let them. Could not a court, on hearing evidence of the excess of the vacant possession value over the value subject to a tenancy at a controlled rent, take the view that the grant of a tenancy at the controlled rent represents a consideration capable of being expressed in terms of money? On this view the court must determine a notional rent for the price-controlled house amounting to (i) the maximum permitted rent for the price-controlled house and (ii) the excess of the vacant possession value of the other house over its controlled value, expressed in terms of rent. If this is the case an offence is committed. It must be admitted that this view is dependent on a finding that the consideration for the letting of the price-controlled house includes the letting of the other house; it is not enough that the transactions are "associated" as mentioned in s. 7 (5). The intention of the parties would clearly be that one transaction should not be carried out without the other, and so it is quite likely that one would be regarded as part of the consideration for the other.

The suggestion of our learned correspondent is undoubtedly ingenious, but it seems to lead one into rather deep and dangerous water. The present writer does not feel inclined to go further than to say that he would not take the risk of advising a transaction on the lines suggested. Unfortunately, counsel's opinion would not seem to give a solicitor any protection.

J. G. S.

HERE AND THERE

FEUDALISM FOR A CHANGE

THAT annual orgy of escapism, the ritual summer holiday, is all too often no escape at all but a mere seasonal recapitulation of established routine.

"A twelvemonth since and it was here they came;

A twelvemonth hence their goal will be the same."

The same cups of tea, the same brands of beer in the same sorts of bars, the same sorts of films in the same sorts of cinemas, the same radio, motor-car and dumb friends' noises, the same old news and newspapers. It may all add up to stability, steadfastness and loyalty, but only a form of mass hypnosis could persuade the migratory hordes that it makes a nice change from the type of high standard of living which it is our national glory to enjoy at home. As a matter of fact, change, since it involves a mental effort of adaptation, is pretty well the last thing the average person wants. Still, come along, have a go! It's holiday time and you'll be a long time at deadly work. How would you like to live in a place where there are no income tax, no traffic problems and no troublesome sex problems for your doggie friend, because there are no ladies in his set to make him restless? Yes, you can stay British and you don't have to charter a boat for a South Sea island. If you happen to live in Devon the place is a good deal closer to you than London. Even from London it's nearer than Newcastle. It is, of course, Sark in the Channel Islands, where a nip or two of the rare old vintage of matriarchal feudalism under the Dame of Sark may form an interesting contrast to our own home-bottled beverage—those long steady draughts of welfare democracy.

SARK POLICEMAN'S LOT

If Sark is feudal it cannot by the most elastic all-way stretch of the imagination be called a police state. The

police force consists of two. They are chosen by election and they are unpaid. The jail of which they are in charge has room for two prisoners only. Here at least one could have pictured the policeman's lot as rosy, an idyllic existence of hearing the little brook a-bubbling and listening to the merry village chime. But for a thinking man (and the constables of Sark have quite a lot of time for thinking) life is not quite as simple as that, and it is reflections of the Junior Constable recently revealed in the *Daily Telegraph* that reminded me how restless is the busy inquiring mind of man even in the Islands of (to all outward appearance) the Blest. Sark, of course, has never had a revolution. To you and me the *corvée*, for instance, is a picturesque word in the French dictionaries, a metaphorical survival of an obsolete custom, dead and buried since 4th August, 1789, when the French Constituent Assembly set out on the long, long trail towards a classless society by abolishing all the privileges so hateful to the egalitarian—sackage, socage, droit du seigneur in all its possible and impossible forms and, of course, the *corvée*, which my Larousse defines as "unpaid work due from the peasant to his lord or to the State," and which now stands for any job you don't happen to like doing. Now, it's all very well to talk about abolishing the unpaid labour of the citizen for the State or for those whom the State sets over him. Between income tax, purchase tax and what have you, we in England must spend on an average a good half of our time working for the gentlemen in Whitehall and Somerset House. *Quelle corvée!* But on Sark they still have the good old-fashioned *corvée*, call it the *corvée* and make no bones about it. That is among the things that worry the Junior Constable. One of his duties is to visit every man and woman on the island and inform them that they must do two days' work a year on the roads. Personally I'd gladly break stones

for a week of twelve-hour days if it would get me off making my income tax return or paying rates. On Sark, if you refuse to go and make roads the Constable fines you £1 on the spot, and that's that. All power corrupts, says the historian, but it is his very power that worries the Junior Constable. He ought not, he says, to be able to fine people *proprio motu*. He ought not to be able to order old women out to work on the roads. Thirsting apparently for paper work, he calls for a system of receipts and accounts. He has it in his mind to complain about all this to the proper authority, the Court of Chief Pleas (the island Parliament).

TECHNICAL DIFFICULTIES

ANOTHER thing that worries the Junior Constable is the enforcement of the licensing laws. Technically, closing time is at ten. In fact the tendency is to stay open in a friendly sort of way until midnight. Though hardly anywhere would the ordinary drinking citizen be inclined to be pedantic on a matter of that sort, his zeal as an officer of the law does him credit. In a "set up" like our own where impersonal government (the corollary of the egalitarian idea) is vastly on the increase and we are kept in order by a great network of anonymous officials, our instinct (when we do not make the effort to overcome it) is to do as they tell us and to bear no

grudge to a set of people who, like ourselves, are (poor beasts) just a cog in the vast machinery of State control. But, where the idea of personal government still prevails, the governed pay the official the compliment of treating him as a human person. If he enforces laws they find distasteful they break his windows and a routine prosecution may make a lifelong enemy. The Junior Constable feels that if closing time were put back to eleven there would be a better chance of its being co-operatively observed. Incidentally, another innovation which would not a little strengthen the arm of the law in extreme cases would be the substitution of a more recent model in handcuffs for the present interesting museum piece (obviously a relic of the harsher feudal practice of the ancients) which you cannot put on without first getting your man on the ground (unless his opening time activities have conveniently placed him there for the picking up). As the islanders have thoughtfully elected a Junior Constable who stands about 5 ft. 6 in. and weighs 8 stone (says a *Daily Telegraph* report) he has reason to anticipate technical difficulties in this respect. Before he succeeds to the office of Senior Constable next year (promotion in the Sark police force is automatic) a course in ju-jitsu and unarmed combat might not be out of place.

RICHARD ROE.

REVIEWS

Palmer's Company Precedents. Part I—General Forms. Sixteenth Edition. By His Honour A. F. TOPHAM, K.C., LL.M. 1951. London: Stevens & Sons, Ltd. £5 10s. net.

In the new edition of this well-known standard text-book there has been a considerable amount of pruning among the less important sections of the text, the idea being that the work should be used with Palmer's Company Law as a supplement. This is reasonable and an improvement because the practitioner who includes this valuable but somewhat expensive work in his library will anyhow be likely to include Palmer's Company Law also.

Although the learned editor has been assisted on limited aspects by Mr. K. Coghill of the Inner Temple and Lincoln's Inn, and by Mr. R. R. Bundy, solicitor, practically the full burden of preparing this present edition (including all the revisions necessitated by the passing of the Companies Act, 1948) has fallen on his shoulders. One cannot but feel that this is too much of a burden for one man, and one feels that there should be associated with the learned editor in the preparation of the work as a whole a junior counsel and a solicitor, each specialising in matters of company law. An instance of the value of such an arrangement is indicated by the fact that the learned editor has had to speculate as to the practice of the Registrar of Companies in the case of the formation of a company under the same name as an existing company in the course of being dissolved (see pp. 308 and 863), although the practice was established as soon as the 1948 Act came into force. Another instance is the procedure for change of name, which is incorrectly stated on p. 900.

The revision consequent on the passing of the 1948 Act has on the whole been well done, but there is still a number of places where amendments or additions are required. Thus on p. 471, which refers to cases where the articles provide that only a shareholder may be a proxy, no reference is made to s. 136, which provides that in the case of a company having a share capital a member may appoint another person (whether a member or not) as his proxy.

The payment of pensions to directors and/or the inclusion of directors in pension schemes is now far more common than in the past and it is surprising to find no provision for this in the specimen objects clauses of memoranda of association; indeed, if the index be trusted, the subject is not mentioned at all beyond brief and unsatisfactory references on pp. 812-813.

Many of the precedents (particularly those of petitions, writs and pleadings) are hallowed both by time and practice. Age is not, however, always a virtue and form No. 600 (Power from English Company to execute Debenture Security in a British Dominion or Colony) appears to be many years out of date, although still of use in some territories; such a form was used years ago (as a footnote indicates) in the then Cape Colony but at that time it was possible there to enter into a mortgage bond covering both movable and immovable property.

Despite the criticism which is made above, this is a book which the company law specialist ought to have.

Oyez Practice Notes, No. 25: Periods of Limitation. By J. F. JOSLING, Solicitor. 1951. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

Those who look to codification as a panacea for all the obscurities of our system of law would do well to consider the law of the limitation of actions. With insignificant exceptions this branch of the law is completely codified; that is, guiding rules limiting the periods within which various types of legal proceedings may be brought are to be found in a number of statutes, principally the Limitation Act, 1939. But there is hardly a paragraph in this mass of enactments which even the most expert practitioner can apply, except to the simplest of facts, without resort to the cases, where they exist, to resolve a point of doubt, or to his own opinion, which is anathema to the codifiers. All of which is another way of saying that the branch of the law with which this guide is concerned is not of the easiest, and our gratitude is due to its author, who must have lived many laborious days (or more likely nights) to produce this distillation of wide reading and careful thought.

The bulk of this book, about two-thirds of the whole, is devoted to a chapter on the periods appropriate to specific types of proceedings, many of which are laid down not in the Act of 1939, but in scattered sections of measures on other subjects. Perhaps the fact that much of the guide deals with matters not in the Act of 1939 explains the absence of a print of the Act, which nevertheless would be a convenient addition in a future edition. Shorter chapters cover such questions as the commencement of the period, the status

of parties as affecting limitation, and the extension and suspension of the period. The only serious omission, in a book which has to be highly selective to cover the ground in the available space, is *The Atlantic Scout* (1950), 94 SOL. J. 438, the only reported authority on the Limitation (Enemies and War Prisoners) Act, 1945, and a highly important one, as an article at 94 SOL. J. 447 showed. One further small point may perhaps be noted for a future edition. The statement in the footnote on p. 57 that "it is no longer necessary that [an] acknowledgment should be such as to enable a promise to pay to be implied" and supported by reference to *Jones v. Bellegrove Properties, Ltd.* [1949] 2 All E.R. 190 (which is also reported in the Law Reports at [1949] 2 K.B. 700), suggests that this is a more modern rule than examination shows it to be.

Bowstead's Digest of the Law of Agency. Eleventh Edition. By PETER ALLSOP, M.A., of Lincoln's Inn, Barrister-at-Law. 1951. London: Sweet & Maxwell, Ltd. £2 10s. net.

The new editor of Bowstead on Agency modestly calls attention in his preface to a number of alterations which he has made in the arrangement of the book. He has been guided by the needs of practitioners, at the same time retaining the style adopted by the original author in which numbered

articles are followed by copious illustrations drawn from the reported cases.

It is well known how excellent this plan has proved to be, how succinctly the propositions are framed and how concisely narrated are the decisions on which they are founded. Let us say at once for the benefit of prospective purchasers of this eleventh edition that the changes made by Mr. Allsop are such as to enhance the value of the book and to improve the logic of its arrangement. It has happened in previous editions that several discussions of principle—the incidents of a contract made on the Stock Exchange, for example—have lain hidden among the digest of illustrative cases. Now these are promoted, with great gain to the clarity of the exposition, to a position immediately following the appropriate article. Then the editor has added helpful discussions on the recent estate agents' commission cases, a worthy recognition of the practical mission of the work and plain evidence of a resolution not to allow even a legal classic to languish in a rut. Alas that not a few of the added portions transgress in the matter of decent English grammatical construction. A comma is not the proper punctuation mark for the end of a sentence.

A feather in everyone's cap is the appendix of very recent decisions, keyed to the appropriate article in the main part of the work. These cases even figure in the table of cases.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

PRIVATE NUISANCE: INJUNCTION

McKinnon Industries, Ltd. v. Walker

Lord Simonds, Lord Normand, Lord Oaksey, Lord Radcliffe, and Rinfret, C.J., of Canada
2nd July, 1951

Appeal from the Court of Appeal of Ontario.

The defendant company's iron and steel works adjoined the plaintiff's nursery gardens. He brought an action against the defendants in 1946 for damage suffered by him through the discharge upon his land and plants of noxious vapours and matter from the defendants' works. The trouble had begun before 1942, and in that year the plaintiff had entered into two agreements with the defendants by the first of which he granted them for \$600 a year the right for three years to discharge the noxious substances on to his land, and by the second of which the defendants paid him \$1,225 in consideration of his discharging them from all claims in respect of past acts similar to those permitted by the other agreement. McKuer, J., granted the plaintiff an injunction, and referred the question of damages for inquiry. The Court of Appeal also held that the case was a proper one for an injunction. The defendants now appealed.

LORD SIMONDS, giving the opinion of the Board, said that the substantial ground on which the defendants based their appeal was the familiar plea that the plaintiff could be adequately compensated by a payment of money and that by his conduct he had shown it to be so. Having fully considered the agreements of 1942, the trial judge concluded, as he was well entitled to do, that the injury to the plaintiff could not be adequately met by a money payment and that his conduct was not such as to justify the denial to him of an injunction to restrain the further violation of his legal right. In that conclusion their lordships concurred. It was, no doubt, necessary to bear in mind, as numerous authorities had pointed out, that special circumstances might occur in which the remedy of damages would adequately compensate a plaintiff for the loss he had suffered and might in the future suffer. But it was for the wrong-doer to satisfy the court that such special circumstances existed. The judge rightly took the view that he had failed to do so. The damage which the plaintiff suffered was extremely grave and of a recurrent nature, and there was some evidence that it was increasing. Whether or not he was advised by his lawyer in 1941 that he was unlikely then to obtain an injunction in legal proceedings, as their lordships thought he probably was, it was no ground for denying him that relief in an action brought in 1946 that in a grave crisis of the war he took no step that

would interfere with the performance by the company of war contracts. The plaintiff was entitled to an injunction, but it was reasonable to suspend its operation until 1st November, 1951. Appeal dismissed.

APPEARANCES: J. L. G. Keogh, K.C. (Canadian Bar), and Stephen Chapman (L. Bingham & Co.); A. G. Slaght, K.C., and R. K. Ross, K.C. (both Canadian Bar) (*Hancock & Scott*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

DIVORCE: COLLUSION

Teale v. Burt

Denning, Birkett and Hodson, L.JJ.
26th June, 1951

Appeal from an order of Willmer, J., made upon a summons adjourned into court.

In the answers of the wife and the co-respondent to the husband's petition for divorce on the ground of adultery, it was alleged that the husband was guilty of collusion, in that, on becoming aware of the wife's adultery, he began to negotiate with her for the disposal of the matrimonial property. It was alleged that in the course of the negotiations an agreement was arrived at whereby, in consideration of the husband's foregoing any right to claim damages in the divorce proceedings, he would pay to the wife less than he would otherwise have had to pay as her share of the matrimonial property. It was alleged that that agreement was carried into effect, and that the net sum so agreed on was paid by the husband to the wife before the institution of proceedings. The husband had included in his petition a claim for damages against the co-respondent. He then applied for the paragraphs of the answers of the wife and the co-respondent alleging collusion to be struck out.

Willmer, J., said that it had been argued for the husband that it was not a material averment to say that he was guilty of collusion; it appeared from the wording of s. 4 of the Matrimonial Causes Act, 1950, that it was only where the court was not satisfied on the evidence that the petition was not presented or prosecuted in collusion with the respondent that collusion was an answer to the petition or became a material question. Here it had not been alleged in terms that the petition was presented or prosecuted in collusion, but merely that the husband had been guilty of collusion. It was further contended that, if the paragraph were amended so as to follow the wording of the statute, the particulars delivered would not support the allegation in its amended form. All that had been alleged in

them was a bargain previous to the institution of the proceedings which might have been collusive; but bearing in mind that the petition had been launched in breach of any such bargain it could not be alleged, having regard to the particulars, that the petition was presented or prosecuted in collusion. It had further been pointed out that collusion was not necessarily a permanent obstacle, but that it was always open to a petitioner to purge his collusion and to institute a fresh suit not so tainted. If, however, it were true, and for the purposes of the summons the allegation must be taken as true, that the damages were in fact paid in the sense of being taken into account in the reduced amount paid to the wife under the agreement, then it was no longer competent for the husband to purge himself of the taint of collusion except by restoring the *status quo*, i.e., by paying back what he had received, albeit indirectly, in pursuance of the agreement. It was said that if he were to do that, and thereby to restore the position, he could clearly say that, notwithstanding his being a party to a collusive agreement earlier, he had nevertheless washed his hands of it, and proceedings could then be instituted free from any taint of collusion. But, so long as that money remained in the hands of the husband—so long as he retained the benefit of the agreement—it could not be said that the suit was not the subject of an agreement which provided for its conduct. That was an allegation which brought the suit directly within the statute as interpreted in *Churchward v. Churchward* [1895] P. 7, and raised a matter which it would be the duty of the court to investigate. As such it disclosed a reasonable answer to the petition, and accordingly it would be quite wrong to order that this allegation and the particulars under it should be struck out. Application to strike out dismissed. The husband appealed.

DENNING, L.J., said that a distinction should be drawn between the facts alleged and the averment of collusion with which they were introduced. As for the facts, it would clearly be the duty of the parties and their advisers to bring them to the notice of the judge trying the case, so that he could determine whether there was collusion or not. The parties, often quite reasonably, in anticipation of divorce, made arrangements in respect of such matters as the future of the house and furniture, maintenance of the wife, custody of the children, or even sometimes as to costs. They often had to be made as a matter of necessity. They amounted to collusion only if one party or the other used them as a bribe. Likewise the parties could make arrangements as to damages so long as they did not tend to pervert the course of justice. Parties could compromise a claim for damages in an enticement case, just as, in the old days, they could compromise an action for criminal conversation; so also they could compromise a claim for damages in divorce proceedings so long as the agreement did not tend to pervert the course of justice and it was brought to the notice of, and sanctioned by, the court. Those matters had to be brought before the court so that the judge could inquire whether there was collusion or not. Unless sanctioned by the court, they were invalid. Clearly, therefore, the facts alleged in the material paragraph of the answers of the wife and co-respondent were matters which must be put before the court to enable it to conclude whether there was collusion. They could not be struck out: they were relevant for the court's consideration. As for the introductory averment, he (his lordship) did not agree that in any event the averment of collusion ought to be struck out because the alleged facts did not warrant it. If the court felt that the proper implication from the facts was that there was an agreement that the wife and co-respondent would not set up a defence which was available to them, or would not make a counter-charge which was open to them, then there would be collusion. At that stage the court could not say that there was no such implication to be made. It was argued for the husband that such an implication would have to be pleaded expressly and that, as it had not been so pleaded, the averment of collusion ought to be struck out. That was not the proper way in which to approach the question of collusion: if the facts were present from which collusion might conceivably be inferred, the court ought not to strike out the introductory averment. Quite possibly, at the trial, collusion would be negatived on the ground that there was no such implication; but they could not strike out that averment unless it were plainly unarguable, which they could not say that it was.

BIRKETT and HODSON, L.J.J., agreed. Appeal dismissed.

APPEARANCES: W. R. K. Merrylees (*Lesser & Co.*); C. P. Harvey, K.C., Gordon Friend and A. Edwards (*Kingsford, Dorman & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DAMAGES: PROCEDURE FOR ASSESSMENT

Millikin v. Smith

Cohen, Singleton and Morris, L.J.J. 3rd July, 1951

Appeal from the Divisional Court.

The plaintiff, an infant, was knocked down by a motor cycle ridden by the defendant. In his action no appearance was entered by the defendant, and an order was made that judgment should be entered for the plaintiff and the damages should be assessed by a master. The master assessed them at £5,000. The Divisional Court confirmed the assessment but gave leave to appeal, intimating that where the plaintiff's injuries were of such a nature that the damages must inevitably amount to a considerable sum, it was not perhaps desirable that the damages should be assessed by a master. The defendant appealed.

COHEN, L.J., giving judgment dismissing the appeal, agreed that in such a case where the injury was serious, it would have been much better if the case had gone to trial, when the damages would have been assessed by a jury.

SINGLETON, L.J., agreeing, said that he thought that the time of the courts would be saved if, in serious personal injury cases, provision were made that the damages should be assessed by three judges of the King's Bench Division, sitting together. That, he thought, would be as good a tribunal on that issue as could be obtained and, as a result, a more stable basis would result. The decision of the three judges should be final. He ventured to express a hope that some tribunal of that kind could be arranged to assess damages when they were serious.

MORRIS, L.J., agreed. Appeal dismissed.

APPEARANCES: Sir Godfrey Russell Vick, K.C., and C. D. Aarvold (*Attwater & Liell*); Norman Richards and John Thompson (*F. W. Hollis*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DESERTION: OFFER TO RESUME COHABITATION

Price v. Price

Somervell, Denning and Hodson, L.J.J.

5th July, 1951

Appeal from Pilcher, J.

After the respondent wife had left the appellant husband he made her a voluntary payment of 35s. a week in respect of the two children of the marriage, in addition to a 5s. family allowance which she received. Her subsequent petition for divorce and the husband's cross-petition for divorce, both based on the ground of cruelty, were dismissed by a commissioner, who found the parties ill-assorted, but neither guilty of legal cruelty. The petitions having been dismissed, the wife, realising that the husband's payments to her would cease, by her solicitors wrote to the husband's solicitors offering to return to him, and stating that she felt that goodwill and a *bona fide* desire by both parties to forget and forgive might still save the marriage. The husband's solicitors replied that they did not consider the offer to be *bona fide*. The wife now applied by originating summons under s. 23 (1) of the Matrimonial Causes Act, 1950, contending that the husband had wilfully neglected to provide reasonable maintenance for her and the children. Pilcher, J., held that the husband was not justified in refusing to accept the offer because it was made *bona fide* and not, in the circumstances, tainted because it did not contain any expression of repentance. The husband appealed.

SOMERVELL, L.J., said that the wife's expressions of dislike of her husband were no doubt very relevant in coming to a conclusion on the question of fact whether her offer to resume cohabitation was genuine; but once the court had come to the conclusion that in the circumstances of the case the offer was genuine, it was an end of the case. It was plain that Pilcher, J., was very fully alive to the points which might suggest that the offer was not genuine; but he had come to the conclusion that it was genuine. He was plainly justified in doing so and the appeal must be dismissed.

DENNING and HODSON, L.J.J., agreed. Appeal dismissed.

APPEARANCES: H. S. Ruttle (*Edwin Coe & Calder Woods*); M. Levene (*Holland & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

"LIBERTY TO APPLY": MEANING**Cristel v. Cristel**

Somervell, Denning and Hodson, L.JJ.

11th July, 1951

Appeal from Devlin, J., in chambers.

Justices had made a maintenance order in favour of the appellant wife on the ground of the respondent husband's desertion. The husband now sought possession of the matrimonial home in order to sell it with vacant possession. A master, by agreement between the parties, made an order for possession, to be suspended until the husband provided as alternative accommodation "a two- or three-bedroom house or bungalow . . . Liberty to apply." Having secured a two-bedroom flat, the husband sought possession by application under s. 17 of the Married Women's Property Act, 1882. The master refused the application. Devlin, J., on appeal, referred to a master the question whether the flat constituted suitable alternative accommodation. The wife now appealed, contending that the master's order was by agreement a final judgment and that the judge had no power to vary it; that the words "Liberty to apply" were procedural only, intended to facilitate the working out of the order by keeping alive the power of the court should there be any change of circumstance; and that on its proper construction the word "house" did not include "flat."

SOMERVELL, L.J., said that in his opinion the word "house" in the original order made by the master could not be construed as including "flat." The fact that it had been thought necessary to insert the word "bungalow" indicated that "house" was not intended to be given a very wide meaning, and must be construed in its ordinary sense. There remained the question whether the master's order could be varied. Reliance had been placed by counsel for the husband on the words "Liberty to apply." *Prima facie*, "liberty to apply" was expressed, and if not expressed would be implied, where the order which had been drawn up was one which required to be worked out, involving matters on which it was necessary to get the decision of the court. It did not entitle litigants to come to the court and ask that the order itself should be varied. His lordship referred to the judgment of Stirling, L.J., in *Poisson v. Robertson* (1901), 50 W.R. 260, and to *Abbott v. Abbott* (1930), 47 T.L.R. 207, and said that in his opinion Devlin, J., had gone too far. *Prima facie* the words "Liberty to apply" applied to matters concerned with the working out of the order, and the insertion of the words "or flat" would be a plain alteration of what had been agreed, and no change of circumstances had been suggested. Section 17 of the Act of 1882 conferred a wide power on a judge or court to suspend an order so as to determine matters as they arose; but where the parties had agreed an order it should not be altered except in very exceptional circumstances.

DENNING and HODSON, L.JJ., agreed. Appeal allowed.

APPEARANCES: P. Goodenay (*Osmond, Bard & Westbrook*); A. Hoolahan (*Irwin Shaw*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

GAS NATIONALISATION: ARBITRATION COSTS**Studholme v. Minister of Fuel and Power (No. 2)**

Evershed, M.R., Jenkins and Birkett, L.JJ. 16th July, 1951

Question of costs arising on the dismissal (see *Studholme v. Minister of Fuel and Power*, ante, p. 466) of a stockholders' representative's appeal from a decision of the Gas Arbitration Appeal Tribunal. In the present instance the Minister agreed to pay the representative's costs before the tribunal on condition that the dismissal of his appeal to the Court of Appeal were followed by the usual consequences as to costs. A stockholders' representative is appointed, under s. 27 (1) of the Gas Act, 1948, "to represent the interests of all holders of securities of" a nationalised gas undertaking "in connection with the amount of compensation payable in respect of those securities . . ." By s. 27 (3) "the Minister shall pay out of moneys provided by Parliament to a stockholders' representative such remuneration (whether by way of salary or fees) and such allowances, and such expenses incurred by him in the exercise of his functions, as may be determined by the Minister with the approval of the Treasury . . ."

EVERSHED, M.R., said that the court would take the opportunity of drawing attention to the way in which the Act of 1948 had, in the material respect, been framed. That other cases would be stated under it was, they were told, on the whole unlikely; but the form chosen, so far as relevant to this matter, found a

parallel, apparently, in other Acts. Since the matter was of public importance, the court said what it did in case Parliament thought it right to alter the present position. The stockholders' representative seemed, *prima facie*, to be in the position of a trustee. There was under the scheme of the Act no trust fund on which he could fall back; and yet, apparently, s. 27 (3) left it in the discretion of the Minister (with the approval of the Treasury, so that not even the Minister could, on his own initiative, determine) whether, if the representative, acting in effect as a trustee, preferred to take the ruling of the tribunal, he would have any of his expenses paid. *Prima facie* he (his lordship) would have thought that, save in exceptional cases, expenses incurred in going to the tribunal would be incurred "in the proper exercise of" the representative's functions. It was significant that the Act appeared to contemplate that the representative would be paid a salary in addition, or alternatively, to fees. It seemed unjust that persons put in the position of trustees were not to be entitled to take the opinion of the tribunal specially set up for the purpose save at their own private risk as to costs. It was not for the court now to say any more or to express any view on what the duty of the Minister might be in particular circumstances, for he had in the present case seen fit with the assent of the Treasury to offer to pay the representative's costs before the tribunal, treating them as being in the present instance expenses properly incurred in the exercise of his functions as a trustee. The appeal failed, as had already been determined, and was dismissed with costs; but the order would be prefaced by a statement that the Minister by his counsel had stated that he would pay the stockholders' representative's costs, taxed as between solicitor and client, before the tribunal. Those costs of the applicant before the tribunal would be taxed as between solicitor and client. The costs of the case in the Court of Appeal would be taxed as between party and party and there would be the usual provision for a set off.

JENKINS and BIRKETT, L.JJ., agreed. Order accordingly.

APPEARANCES: A. A. Mocatta, K.C., and S. W. Templeman (*Linklaters & Paines*); G. R. Upjohn, K.C., and J. P. Ashworth (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

DAMAGES: APPORTIONMENT AMONG FAMILY: DEFENDANT NOT CONCERNED**Eifert v. Holt's Transport Co., Ltd.**

Singleton and Morris, L.JJ., and Roxburgh, J. 18th July, 1951

Appeal from Barry, J.

The plaintiff's husband was killed in a collision between his motor cycle and the defendants' lorry, the defendants admitting liability. There was one child of the marriage. Barry, J., on a consideration of all the facts relevant to the widow's claim on behalf of herself and the child under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act, 1935, awarded £6,400 damages under the earlier Act and £300 under that of 1935. On the question of apportionment of the £6,400 Barry, J., invited the assistance of counsel for the plaintiff. Counsel, after a discussion with the widow and the grandfather of the child, contended for two-thirds for the child and one-third for the widow. An apportionment having been made of £4,400 damages for the child and £2,000 for the widow, the defendants appealed, contending that the large amount awarded to the child, as compared with that awarded to the mother, showed that the total award was wrong.

SINGLETON, L.J., said that he had never known defendants complain of the apportionment of damages. What was important to them was the total sum awarded. When that had been assessed under the Fatal Accidents Act, 1846, unless there were any question as to money in court, the task of the defendant was then, surely, over. The defendant was not concerned in the apportionment. If the judge made an apportionment, with the mother's approval, which might be too favourable to the child, that was not a matter of which the defendant could complain. If he could, he ought to complain to the trial judge there and then, whereas no such point was raised for the defendants before Barry, J. He (Singleton, L.J.) was inclined to think that this court could have corrected the apportionment if it had thought right so to do, but there was no reason why it should. If the apportionment were made according to the wish of the plaintiff in the action, the widow, who had given up part of that to which she would be entitled, the defendants were not entitled to

complain. Their duty was fulfilled by paying the total amount of the damages awarded. His view was reinforced by s. 2 of the Act of 1846. The appeal failed.

MORRIS, L.J., and ROXBURGH, J., agreed. Appeal dismissed.

APPEARANCES: N. R. Fox-Andrews, K.C., and Anthony Allen (Stanley & Co.); L. G. Scarman (Curwen, Carter & Evans).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FOREIGN STATE: SUBMISSION TO JURISDICTION

Kahan v. Federation of Pakistan

Jenkins and Birkett, L.J.J. 24th July, 1951

Appeal from Slade, J., in chambers.

The plaintiff entered into a contract for the supply of Sherman tanks to the Government of Pakistan. He instituted proceedings for breach of the contract, there being a number of defendants, including the defendant federation, originally sued as the Government of Pakistan. Clause 19 of the contract was stated to provide: "... this agreement shall be ... governed by English law and for the purpose of proceedings this agreement shall be deemed to have been made in England and to have been performed there. The Government agrees to submit for the purposes of this agreement to the jurisdiction of the English courts, any legal proceedings ... requiring to be served ... shall be deemed properly served, if served on the vendor at" specified addresses. The agreement was signed by the High Commissioner for Pakistan. The defendant government entered a conditional appearance to the writ and issued a summons to set it aside so far as it purported to implead them. The master set the writ aside to that extent and Slade, J., upheld his decision. The plaintiff now appealed. The Secretary of State for Commonwealth Relations gave a certificate that in his view Pakistan was an independent sovereign state.

JENKINS, L.J., said that, while the plaintiff accepted the certificate as conclusive, the defendants wished to keep that question open. No convincing reasons had been adduced why such a certificate should not be just as conclusive here as it would be in the case of a foreign sovereign state, but the question was not fully argued and it was not necessary for the purposes of the appeal to express any concluded opinion on it, for both parties agreed that for present purposes the federation could be taken to be in the position of a foreign sovereign state so far as the question of immunity was concerned. But the federation reserved the right to make the alternative submission, should the occasion arise, that special considerations might apply to the case of a member of the British Commonwealth of Nations, whose rights stemmed from an Act of the Imperial Parliament, differing from those which applied in the ordinary case of a foreign sovereign state in the strict sense of that expression. On the basis that the federation was in the position of an independent foreign sovereign state, the rule was well settled (see *per* Lord Atkin in *Compania Naviera Vascongado v. s.s. Christina* [1938] A.C. 485, at p. 490, where it was laid down that the courts would not implead a foreign sovereign against his will or by their process seize or detain his property). *Prima facie*, the present case came within those two propositions. Counsel for the plaintiff used cl. 19 of the contract in two ways: First, he said that here a foreign sovereign had chosen to come to this country and enter an ordinary commercial agreement containing cl. 19, which showed that the contract was to be regarded in no different light from one between ordinary individuals for similar purposes; and he contended that such a transaction was on general principles outside the ordinary doctrine of immunity. He (his lordship) could not accept that argument: a foreign sovereign could not be directly impleaded unless he submitted to the jurisdiction of the court. It was then argued that cl. 19 was for this purpose a submission to the jurisdiction of the court which precluded the federation from thereafter objecting to the jurisdiction in any proceedings which might ensue upon the contract. If the matter were regarded as free from authority, there was considerable attraction in that argument. Why should the federation be allowed to resile from the bargain made in cl. 19 in clear terms? But it was established beyond question by authorities binding upon the Court of Appeal that a mere agreement by a foreign sovereign to submit to the jurisdiction of the courts of this country was wholly ineffective if that sovereign chose to resile from it. Nothing short of an actual submission to the jurisdiction—a submission, as it had been termed, in the face of the court—would suffice (see *Mighell v. Sultan of Johore* [1894] 1 Q.B. 149, *per* Lord Esher, M.R.,

at p. 159, and *Duff Development Co., Ltd. v. Kelantan Government* [1924] A.C. 797, *per* Lord Cave, L.C., at p. 810). The appeal failed.

BIRKETT, L.J., agreed. Appeal dismissed.

APPEARANCES: I. J. Lindner (G. L. Barnett & Co.); Kenneth Diplock, K.C., and Viscount Hailsham (Sanderson, Lee & Co.).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

INCOME TAX: ACTOR'S COVENANT NOT TO ACT

Higgs v. Olivier

Harman, J. 11th July, 1951

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

By an agreement between the respondent taxpayer, Sir Laurence Olivier, and the film company for whom he made the film of "King Henry V," the taxpayer, in consideration of a payment of £15,000, agreed that he would not, for a period of eighteen months from the date of the deed, appear as an actor in, or act as producer or director of, any film to be produced in the United Kingdom, or the United States of America or elsewhere, for any one but that company. The object of that covenant was to protect the exploitation of the film "King Henry V." The taxpayer was assessed to income tax for the year 1946-47 under Case II of Sched. D to the Income Tax Act, 1918, in respect of the profits and gains of his vocation as an actor on a sum which included the £15,000. It was contended on his behalf that the £15,000 arose under the deed of 1945 alone, that it was not paid for any activity by him and, accordingly, that it was not a taxable receipt. The Special Commissioners held that the £15,000 did not come to the taxpayer as part of the income from his vocation, but, on the contrary, for refraining from carrying on his vocation, and that it was a capital receipt, and so not taxable. The Crown now appealed.

HARMAN, J., referred to *Kelsall Parsons & Co. v. I.R.C.* (1938), 21 Tax Cas. 608, at p. 619, *Billam v. Griffith* (1941), 23 Tax Cas. 757, at p. 761, and said that there was evidence which justified the commissioners in saying that this was an agreement by which the taxpayer refrained from carrying on a part of his vocation, and that that could not be incidental to the carrying on of that vocation. Had there been evidence that this was a regular practice with actors, it would not be right to come to the conclusion that this was not an incident of the vocation of such persons. When that kind of circumstance arose it could be considered, but the taxpayer here had given evidence that he had never entered into such an agreement before, and there was no evidence that anybody else had ever done anything of the sort. It would therefore not have been open to the commissioners to find that this was an ordinary incident of the carrying on of an actor's vocation. It was a very special case in very special circumstances. The commissioners seemed so to have found, and he (his lordship) could not upset the finding. A review of the cases cited would not be of value because all these cases depended on their own facts, and no one was very like any of the others. Possibly *Glenboig Union Fireclay Co., Ltd. v. Inland Revenue Commissioners* (1922), 12 Tax Cas. 427, on which both sides relied, was more relevant than any other. If he were at liberty to regard this matter as *res integra*, he would come to the same conclusion as that at which the commissioners had arrived. There being evidence on which they could come to their conclusion, which was one of fact, it was not for him to dispute it. Appeal dismissed.

APPEARANCES: Sir Frank Soskice, K.C., A.-G., and R. P. Hills (Solicitor of Inland Revenue); F. Grant, K.C., and P. M. B. Rowland (Walter Burgis & Co.).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

MEDICINE: UNLAWFUL USE OF TITLE "PHYSICIAN"

Wilson v. Inyang

Lord Goddard, C.J., Lynskey and Devlin, JJ. 13th June, 1951

Case stated by the metropolitan magistrate sitting at West London Magistrates' Court.

The defendant, an African who had lived in England for two years, advertised himself in a newspaper as, among other things,

a "Naturopath Physician." The advertisement was in other respects also likely to convey the impression that he was a registered medical practitioner, though no prohibited title except the word "physician" was used. The magistrate, before whom he was charged with contravening s. 40 of the Medical Act, 1858, found that the defendant genuinely believed that he was, by virtue of a course of training which he had undergone and an examination which he had passed, entitled to describe himself as a "physician"; and that, while no one educated in England could reasonably have believed that that course of instruction and examination would entitle him so to describe himself, as he was an African who had been in England only two years, he had acted reasonably in believing what he had; and that he was accordingly not guilty of "wilfully and falsely" describing himself as a physician in contravention of s. 40. The prosecutor appealed. By s. 40 of the Medical Act, 1858, it is an offence for anyone "wilfully and falsely" to use the title "physician," or any name implying that he is registered as a medical practitioner under the Act.

LORD GODDARD, C.J., said that whether or not a person who was not a registered medical practitioner had "wilfully or falsely" used one of the titles or descriptions prohibited by s. 40 of the Act of 1858 was a question of fact for the court of summary jurisdiction. In deciding that question the court must apply ordinary principles and test the matter in the light of common sense. Whether the defendant was reasonable or not in his belief that he was acting in good faith was evidential only and not conclusive of the matter, although, if a defendant had no reasonable grounds for believing that he was acting honestly, that would be strong evidence—on which, generally speaking, the court would conclude—that he was not acting honestly. While the court must always take into account the presence or absence in the defendant of reasonable grounds for his belief, the Divisional Court did not lay down in *Younghusband v. Luftig* [1949] 2 K.B. 354; 93 Sol. J. 375, that a defendant could not be taken to have acted honestly if he did not have reasonable grounds for believing that he was so acting. As there was evidence on which the magistrate could reach his conclusion, and as he had taken into account the presence or absence of reasonable grounds for the defendant's belief, it would be contrary to the decision in *Younghusband v. Luftig*, *supra*, for the court to interfere with his decision, and the appeal failed.

LYNKEY and DEVLIN, J.J., agreed. Appeal dismissed.

APPEARANCES: J. R. Cumming-Bruce (*Hempsons*). The defendant did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SALE OF GOODS: SELLER'S WARRANTY GIVEN TO THIRD PARTY

Shanklin Pier, Ltd. v. Detel Products, Ltd.

McNair, J. 6th July, 1951

Action.

The plaintiffs entered into a contract with a company for the repair of their pier. They had a right to vary the specification, which included painting the pier. Accordingly they required the contractors to obtain from the defendants and use on the pier a special anti-corrosive made by the latter, who told the plaintiffs that the paint had a life of from seven to ten years. The plaintiffs brought this action for breach of warranty, alleging that the defendants' paint had proved to have a very short life, which had resulted in £4,127 extra expense to the plaintiffs. (*Cur. adv. vult.*)

McNAIR, J., said that the defendants had contended that in law a warranty could give rise to no enforceable cause of action except between the parties to the main contract in relation to which the warranty had been given. In principle that submission seemed to him unsound. If, as was elementary, the consideration for the warranty in the usual case was the entering into the main contract in relation to which the warranty was given, he saw no reason why there might not be an enforceable warranty between A and B supported by the consideration that B should cause C to enter into a contract with A or that B should do some other act for the benefit of A. The defendants, however, relied on *Drury v. Victor Buckland, Ltd.* [1941] 1 All E.R. 269, particularly *per* Scott, L.J., at p. 273. That case afforded no support for the defendants' proposition, and the same view of the effect of that decision as he (his lordship) took had been taken by Jones, J., in *Brown v. Sheen & Richmond Car Sales, Ltd.* [1950] W.N. 316. That judge entered judgment against a motor-car dealer on an express oral warranty given in relation to the

purchase of a car, the transaction, as in *Drury's* case, *supra*, being carried through with the assistance of a finance company. It was here sought to distinguish *Brown's* case, *supra*, on the ground that in the statement of facts in the report of that case in [1950] 1 All E.R. 1102, at p. 1103, it was stated that "the plaintiff agreed to buy" the motor-car from the defendants; but the pleadings in *Brown's* case, *supra*, which he (his lordship) had examined, lent no support to the suggestion that in that case there was in any legal sense any agreement to sell between the plaintiff and the defendants. The judgment of Hilbery, J., in *Parker v. Oloxo, Ltd.* [1937] 3 All E.R. 524, at p. 529, also negatived the defendants' submission in the present case. Judgment for the plaintiff.

APPEARANCES: K. Diplock, K.C., and J. C. Leonard (*Cripps, Harries, Hall & Co.*); K. E. Shelley, K.C., and Guy Aldous (*P. H. Brashier & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PARTIES DECLARED NO LONGER MARRIED

Igra v. Igra

Pearce, J. 24th July, 1951

Wife's petition for a declaration that her marriage to the respondent no longer subsisted.

The parties were married in Germany in 1926. The husband was expelled to Poland in 1938, but managed to reach London, remaining resident in the United Kingdom until 1951. The wife, at the suggestion of the Gestapo, then had her marriage dissolved by the Landgericht in Berlin, the husband having no notice of the proceedings until after the end of the war. The wife joined him in this country in 1947 but they separated because of differences after a short period of cohabitation. It was provided by s. 77 (4) of Ordinance No. 16 enacted by the Control Council of Germany in 1946 that no claim could be made for restoration of a marriage which had been dissolved by divorce in Germany. In February, 1951, the wife presented a petition for jactitation of marriage, asking for an injunction to restrain the husband from boasting or asserting that he was married to her. In the alternative she prayed for a declaration that she was no longer married to the husband. A letter written by the husband after the date of the petition, stating that he had married again in America, was before the court.

PEARCE, J., said that he doubted, in the circumstances, whether the wife had acted under duress or whether the divorce had been distasteful to her. It was probable that the decree had been made on the ground that the parties had lived apart for over three years and that a resumption of cohabitation was unlikely. In view of s. 77 (4) of Ordinance No. 16, he had no doubt that the German decree was valid in Germany. On the facts the wife could not have the injunction which she sought, but in *Schuck v. Schuck* (1950), 94 Sol. J. 386; 66 T.L.R. (Pt. 1) 1179, a similar case, Ormerod, J., had held that the court had power to make a declaration. He (Pearce, J.) respectfully agreed with that decision. But the question had to be considered whether in the absence of service there had been a failure of natural justice. His lordship referred to *Pemberton v. Hughes* [1899] 1 Ch. 781; *Rudd v. Rudd* [1924] P. 72; *Shaw v. Attorney-General* (1870), L.R. 2 P. & D. 156; *Maher v. Maher*, *ante*, p. 468; [1951] 1 T.L.R. 1163; *Boettcher v. Boettcher* [1949] W.N. 83; 93 Sol. J. 237; *Luccioni v. Luccioni* [1943] P. 49, and *Rosling v. Rosling*, Rayden on Divorce (5th ed.), p. 232, and said that the English courts had power to dispense with service on a respondent and the court should be slow to brand as invalid a foreign decree of divorce, especially one made in war-time. There was no evidence that no curator had been appointed or that there had been no form of substituted service in the Berlin proceedings. Moreover, the husband himself was not now complaining of the decree, which he had accepted by marrying again. The Ordinance of 1946 must also be considered, and it would be unfortunate if the English court should refuse to acknowledge the decree so that the wife would be held to be married here and divorced in Germany. Such a decision would be contrary to international comity. Since it had not been proved that the German decree offended against natural justice there would be a declaration as prayed.

APPEARANCES: John Mortimer and Rayner Blanch (*G. Parry Jones*, The Law Society Divorce Department); there was no appearance by or for the husband.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

CORRECTIVE TRAINING: REPORTING TO APPOINTED SOCIETY

R. v. Homer
(PRACTICE NOTE)

Lord Goddard, C.J., Hilbery and Ormerod, JJ.
16th July, 1951

Appeal against sentence.

The appellant was given leave by Gorman, J., to appeal against a sentence of corrective training because an order had been made under s. 22 of the Criminal Justice Act, 1948, when the sentence was passed.

LORD GODDARD, C.J., in giving the judgment of the court, said that once or twice quarter sessions had made the mistake of making an order under s. 22 of the Criminal Justice Act, 1948, when they were sentencing a person to corrective training. The effect of it was simply a nullity, for Sched. III to the Act provided for placing a person under supervision when he was released from corrective training on licence. There was therefore no need to give leave to appeal if *per incuriam* an order were made under s. 22: it would just be treated as surplusage and expunged. Appeal dismissed.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DEFENCE OF INVOLUNTARY ACT: PREVIOUS CONVICTIONS

R. v. Harrison-Owen

Lord Goddard, C.J., Hilbery, Byrne, Finnermore and Ormerod, JJ.
30th July, 1951

Appeal against conviction and sentence.

The appellant was found in a house by its owner while a party was in progress. He found the key to the house in the handbag of the owner, which she had left in her motor car which was parked outside the house. After being arrested he made a statement in which he said that on the day of the alleged offence he had had a lot to drink, had then felt ill, and had no recollection of the acts with which he was charged. At the trial it was

uncertain whether his defence was insanity or drunkenness, but the substantial defence was that his acts were involuntary, and that he entered the house in a state of automatism. The trial judge took the view that the defence amounted to one of accident, and he directed counsel for the prosecution that the whole of the appellant's past history should be put to him. The appellant then, in answer to counsel's questions, admitted that he had been convicted on some six or more occasions of larceny or housebreaking. He was convicted of burglary and now appealed.

LORD GODDARD, C.J., giving the judgment of the court, said that it was obvious that, once the appellant's previous convictions became known to the jury, he would have no chance of acquittal. A court of five judges had been formed because at first sight the case had appeared to merit the consideration of the full court; but it now seemed to be just a simple case. In view of the appellant's defence, the trial judge had directed the prosecution to cross-examine the appellant about his previous convictions, and had thereby confused intention with accident. It was true that in certain cases, such as murder or manslaughter, where the defence was one of accident, it was relevant to show that other persons connected with the prisoner had died in similar circumstances (*R. v. Smith* (1915), 31 T.L.R. 617). But here the real defence was that the act in question was not voluntary, but was committed when the appellant was in a state of automatism. The question whether it was or was not in fact a voluntary act was for the jury. Unfortunately, the judge had taken the view that the authorities entitled him to allow the appellant to be cross-examined about his previous convictions to show that the act was not an involuntary one. The court could find no authority for that view. No question of principle was involved here at all, except that, where the defence was that an act was not voluntary, it was not permissible to cross-examine the accused person about his previous convictions. In view of the cross-examination of the appellant, the court did not feel justified in applying the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, and the conviction would be quashed. Appeal allowed.

APPEARANCES: *Edmund Davies*, K.C., and *Philip Owen* (*Registrar, C.C.A.*); *Gerald Howard*, K.C., and *J. Gazdar* (*D.P.P.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Additional Import Duties (No. 4) Order, 1951. (S.I. 1951 No. 1488.)

Bacon (Control and Prices) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1523.)

Dangerous Drugs Regulations, 1951. (S.I. 1951 No. 1495.)

Domestic Pottery (Maximum Prices) Order, 1951. (S.I. 1951 No. 1471.)

Eggs (Great Britain and Northern Ireland) (Amendment No. 6) Order, 1951. (S.I. 1951 No. 1510.)

Grange Water Order, 1951. (S.I. 1951 No. 1518.)

Great Ouse River Board Constitution Order, 1951. (S.I. 1951 No. 1527.)

Herring Industry Scheme, 1951. (S.I. 1951 No. 1478.)

Laundry Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 1501.)

London Traffic (Prescribed Routes) (No. 21) Regulations, 1951. (S.I. 1951 No. 1508.)

London Traffic (Prescribed Routes) (No. 22) Regulations, 1951. (S.I. 1951 No. 1529.)

Matches (Prices) Order, 1951. (S.I. 1951 No. 1526.)

Meat (Rationing) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 1505.)

Milk (Control and Maximum Prices) (Great Britain) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1490.)

Nickel Prohibited Uses (Board of Trade) (Amendment) Order, 1951. (S.I. 1951 No. 1516.)

Nickel Prohibited Uses (Minister of Supply) (No. 2) Order, 1951. (S.I. 1951 No. 1515.)

Police (Scotland) (Amendment) Regulations, 1951. (S.I. 1951 No. 1492 (S. 79).)

Police (Scotland) (Amendment) (No. 2) Regulations, 1951. (S.I. 1951 No. 1507 (S. 82).)

Police (Women) (Scotland) (Amendment) Regulations, 1951. (S.I. 1951 No. 1493 (S. 80).)

Police (Women) (Scotland) (Amendment) (No. 2) Regulations, 1951. (S.I. 1951 No. 1506 (S. 81).)

Retention of Main under Highway (Wiltshire) (No. 1) Order, 1951. (S.I. 1951 No. 1512.)

Retention of Main and Pipe under Highway (Wiltshire) (No. 2) Order, 1951. (S.I. 1951 No. 1519.)

Safeguarding of Industries (Exemption) (No. 9) Order, 1951. (S.I. 1951 No. 1489.)

Stopping up of Highways (Berkshire) (No. 4) Order, 1951. (S.I. 1951 No. 1513.)

Stopping up of Highways (Cumberland) (No. 1) Order, 1951. (S.I. 1951 No. 1500.)

Stopping up of Highways (Essex) (No. 5) Order, 1951. (S.I. 1951 No. 1483.)

Stopping up of Highways (Essex) (No. 6) Order, 1951. (S.I. 1951 No. 1520.)

Stopping up of Highways (Kent) (No. 6) Order, 1951. (S.I. 1951 No. 1521.)

Stopping up of Highways (London) (No. 18) Order, 1951. (S.I. 1951 No. 1522.)

Stopping up of Highways (Soke of Peterborough) (No. 3) Order, 1951. (S.I. 1951 No. 1482.)

Tithe (Change of Ownership of Land) Rules, 1951. (S.I. 1951 No. 1504.) See p. 552, *ante*.

Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 1524.)

Utility Apparel (Waterproofs) (Amendment) Order, 1951. (S.I. 1951 No. 1525.)

Winchester-Preston Trunk Road (Bath Street and Broad Street, Abingdon) Order, 1951. (S.I. 1951 No. 1498.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90 Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Vendor and Purchaser—FIXTURES—IMMERSION HEATER

Q. I act for the purchaser of a freehold dwelling-house. Prior to the sale the purchaser inspected the premises with the vendor, and amongst the fixtures and fittings was an immersion heater. At the inspection there was no mention by either the vendor or the purchaser of this heater. Shortly after the purchaser had seen the property, he saw the estate agents in whose hands it had been placed by the vendor, and signed the contract to purchase, and here also there was no mention of the immersion heater. So far as the purchaser was concerned he was of the opinion that it was to be included in the sale. About two days later the estate agents interviewed the purchaser and asked him whether he was prepared to buy the immersion heater as well, and they suggested a figure to him. The purchaser did not make an offer, but merely stated that in his opinion the value of the heater was £8. The vendor then demanded £14 for the heater, and on the purchaser refusing to pay for it he took immediate steps to remove the heater. Can the purchaser insist on the replacement of the immersion heater free of cost to him?

A. In the absence of specific mention in the contract of particular fixtures and fittings the general principle is that fixtures annexed to the property at the date of the contract pass with the land and cannot be removed by the vendor (*Gibson v. Hammersmith Railway Co.* (1863), 32 L.J. Ch. 337). In this connection the law appears to lean slightly more in favour of a purchaser than in favour of a landlord when determining what fixtures may be removed by a tenant. It is accordingly important to decide whether the immersion heater is a "fixture." Apart from the legal maxim that whatever is annexed to the land becomes part of the land, this is a question of fact involving consideration of degree of annexation and purpose of annexation (*per Blackburn, J.*, in *Holland v. Hodgson* (1872), L.R. 7 C.P. 328). Upon a question of fact, cases are not of very great assistance, but in *Sewell v. Angerstein* (1868), 18 L.T. 300, gas fittings were held not to be fixtures, nor were electric lamps in *British Economical Lamp Co. v. Empire, Mile End, Ltd.* (1913), 29 T.L.R. 386. Generally speaking, in regard to non-trade fittings, if the article in question can be removed without causing material damage either to the fabric of the building to which it is attached or to the article itself, it is not a fixture (*Wake v. Hall* (1883), 8 App. Cas. 195). Taking these matters into consideration, our own opinion is that an immersion heater is not a fixture and can be removed by the vendor unless expressly included in the sale. It will be appreciated that the vendor must reinstate the tank in perfect condition after removal of the heater.

Intestacy—ASSENTS BY HEIRS IN FAVOUR OF ONE OF THEM—DEEDS OF GIFT—STAMP DUTY

Q. A purchased Greenacre in 1925 for £300 and obtained a mortgage for the same amount to complete the purchase. In 1930 A died intestate, leaving B and C, two sisters, and D, a brother, her surviving. With the exception of Greenacre there was no other property forming part of A's estate. No letters of administration were obtained at the time. A few years later, however, B, who has always resided at Greenacre, paid off the mortgage with her own moneys, but no vacating receipt was endorsed on the mortgage. B is now anxious to have the property vested in her own name and C and D are agreeable to this. B, C and D have now obtained letters of administration to A's estate. Please advise what steps should now be taken in order to vest the property in B, having particular regard to the question of stamp duty.

A. In order to support a direct assent by B, C and D in favour of B, there must first be executed by C and D deeds of gift in respect of their interests in the residuary estate of A. The property is no doubt now worth considerably more than £300 and *ad valorem* duty will be paid on each deed as on one-third of the value of the property less one hundred pounds, the circumstances of the redemption of the mortgage being recited in the deeds of gift (see *Emmett on Title*, 13th ed., vol. I, p. 539). We do not consider that there is any way of avoiding *ad valorem* duty. If a deed of appropriation is employed this would attract *ad valorem* duty owing to the element of gift, and it is likely that the Commissioners of Inland Revenue would regard the deed as a

voluntary conveyance and exact duty on the full value of the property under s. 74 of the Finance (1909-10) Act, 1910. Had there been other estate of A a deed of appropriation would have been employed, with or without an assent, and in that case *ad valorem* duty would only have been chargeable on the amount of any equality money.

Rent Restriction—TRANSMISSION OF TENANCY—SON OF DECEASED STATUTORY TENANT IN MERCHANT NAVY

Q. A statutory tenant of a dwelling-house to which the Rent Acts apply died intestate. There had been no previous transmission of the tenancy under the Rent Acts. The tenant left a son who has always lived with her, but is a donkeyman on a tanker and is away from home for periods of approximately eight months at sea. The periods when he is at home between voyages vary from between three to six weeks, and two or three years ago he was at home two years on a shore job. Whenever he was in this country he resided at his mother's house and all his belongings are there. He left home after staying there for six weeks on the 23rd January, and his mother, the tenant, died on the 28th January. The son has been recalled from sea, but may not arrive for some weeks. We are aware of the decision in *Turnbull v. O'Brien* [1945] L.J.N.C.C.R. 12 to the effect that absence for the whole of the six months' period on war service does not affect the right of a member of the deceased tenant's family to a transmission of the tenancy, but a report of this case is not available. Is the son entitled to a statutory tenancy on the death of his mother under s. 13 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933?

A. In our opinion the son is entitled to succeed to the statutory tenancy of his mother under s. 12 (1) (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by s. 13 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. Although the case of *Turnbull v. O'Brien*, *supra*, is directly related to absence on war service and, being a county court decision, is merely of persuasive authority, we do not think that any distinction can be drawn between absence from home on war service and absence for employment at sea. In the report of the above decision, His Honour Judge Richardson says (at p. 14): "I think it is clear that the house in question is K's residence in law . . . It is his house; the place he would give as his personal address; the place in which he keeps his possessions; the place of his past and future habitation without any present intention of removing to any other abode or dwelling-house." These words would appear equally applicable to the position of the deceased tenant's son in the case now under consideration.

Devise to Charity—LAND NOT SOLD WITHIN YEAR FROM DEATH—EFFECT OF ASSENT

Q. A died on 24th June, 1946, having by her will devised (*inter alia*) certain freehold property to the vicar and churchwardens of X. On 30th September, 1949, A's personal representatives purported to execute an assent of such property in favour of the said vicar and churchwardens, who have now agreed to sell it to B. As the property was not sold within one year of the testatrix's death, it would seem that it vested in the Official Trustee of Charity Lands on 24th June, 1947, by virtue of the Mortmain and Charitable Uses Act, 1891, and that the assent of 30th September, 1949, is consequently invalid. What is the effect, if any, of the assent, and are the vicar and churchwardens in a position to execute the conveyance to B? If not, should the testatrix's personal representatives execute the conveyance?

A. A devise to the vicar and churchwardens of a parish is charitable since it can only be applied by them for charitable purposes: *Re Garrard* [1907] 1 Ch. 382. Although s. 6 of the Mortmain and Charitable Uses Act, 1891, provides that land devised for charitable purposes and not sold within a year from the testator's death vested in the Official Trustee of Charity Lands, it was held in *Re Gorham's Charity Trust* [1939] Ch. 410 that the effect of the Administration of Estates Act, 1925, was that the legal estate continued in the personal representatives until they assented. The assent of 30th September, 1949, should

therefore have been in favour of the Official Trustee, and as it was executed in favour of persons not entitled it was incapable of passing the legal estate. There are two courses open in the present case. Either a fresh assent can be executed in favour of the Official Trustee and a conveyance taken from him, or the

personal representatives can apply for an extension of time under s. 5 of the 1891 Act. In the latter event and assuming such an extension were granted we consider that the existing assent would be rendered effective retrospectively and that the vicar and churchwardens could sell within the extended time.

NOTES AND NEWS

Honours and Appointments

Mr. G. W. SHAW, assistant solicitor in the Town Clerk's department at Bootle, has been appointed to a similar post at Rochdale in succession to Mr. D. F. BANWELL, who is leaving to become senior prosecuting solicitor to the Sheffield City Corporation.

Personal Notes

Mr. A. C. Dixon, solicitor, of Coventry, was married on 10th August to Miss Julia Helena Rippon, of Coventry.

Mr. R. M. Lewis, solicitor, of Bury St. Edmunds, was married recently to Miss Maureen Frances Payne Milk, of East Dereham.

Mr. W. E. Rees, solicitor, of Denbigh, was married on 14th August to Miss Eirina Mair Owen, of Tremeirchion.

Mr. D. G. B. Wood, solicitor, of Keighley, was married on 13th August to Miss Pamela Hemingway, of Batley.

Miscellaneous

TITHE ACT, 1951, SECTION 10 (4)

Section 10 (4) of the Tithe Act, 1951, provides for the transfer on 1st September, 1951, to the Tithe Redemption Commission of certain functions hitherto exercised by the Minister of Agriculture and Fisheries.

The functions so transferred relate to the apportionment and redemption of (a) annuities charged on land under the Tithe Acts, 1918 and 1925, and (b) annuities in lieu of corn rents, rentcharges, or money payments redeemed under the Tithe Acts, 1836 to 1936. The procedure is governed by s. 1 of the Tithe Annuities Apportionment Act, 1921, and ss. 191 and 192 of the Law of Property Act, 1925, and by the Corn Rent Annuities (Apportionment and Redemption) Rules, 1951 (S.I. 1951 No. 1535), dealing with procedure, and the Tithe Fees Rules, 1951 (S.I. 1951 No. 1534), prescribing the fees payable (see *infra*).

The address of the Tithe Redemption Commission is 33-37 Finsbury Square, London, E.C.2.

THE TITHE FEES RULES, 1951 (S.I. 1951 No. 1534)

Under these rules, which take effect on 1st September, 1951, no fees will be payable for the inspection of tithe apportionments, and all public documents in the custody of the Commission relating to tithe rentcharge, tithe redemption annuities and chancel repairs may be inspected free of charge between the hours of 10 a.m. and 4 p.m. (9.30 a.m. and 11.30 a.m. on Saturdays).

The fees payable for the supply of copies of, and extracts from, the several classes of documents issued under the Tithe Acts have been revised, but (with certain minor variations) they are the same as have hitherto been charged.

The fees for the apportionment and redemption of corn rent annuities, responsibility for which has been transferred to the Commission, are (with certain minor variations) identical with those hitherto charged by the Ministry of Agriculture and Fisheries.

At the June examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to Honorary Distinction: **SECOND CLASS (in alphabetical order)**: C. J. S. Bell, LL.B. London, A. M. Coates, B.A. Oxon, A. L. Diamond, LL.B. London, E. H. Dodson, M.A., LL.B. Cantab., D. R. Harrison, LL.B. Manchester, P. D. Limbach, M.A. Cantab., J. A. Lloyd, B.A., LL.B. Cantab., M. G. Morgan-Wynne, LL.B. Manchester, J. K. Mosley, B.A. Cantab., C. North, B.A. Oxon, D. R. O'May, LL.B. London, A. F. Parsons, LL.B. Liverpool. **THIRD CLASS (in alphabetical order)**: J. Allen, M.A.,

LL.B. Cantab., P. G. Ashcroft, LL.B. Durham, J. S. Bennett, W. Berry, M. J. Cooksey, R. P. E. Crofts, B.A. Cantab., M.A. Columbia, B. W. Davey, H. W. Gamon, B.A. Oxon, J. Gilderdale, LL.B. London, C. H. B. Gisborne, A. G. Hall, LL.B. Birmingham, R. H. Haythornthwaite, A. H. Hewlett, G. W. Hodgson, LL.B. Leeds, H. D. B. Munro, G. F. Oakley, M.A. Oxon, E. Preston, LL.B. Liverpool, D. E. Smith, P. F. Smithson, R. M. Stokes, G. L. Sturgess, B.A., LL.B. Cantab., G. F. Symons, N. Taylor, LL.B. Manchester, A. Thompson, M.A. Oxon, W. E. K. Vaughan, LL.B. London, M. G. Wayman, O. R. W. Woodfield.

The Council have given class certificates to the candidates in the second and third classes. One hundred and three candidates gave notice for examination.

The next quarter sessions for the Borough of Smethwick will be held at the Law Courts, Crocketts Lane, Smethwick, on Tuesday, 11th September, at 10.30 a.m.

OBITUARY

MR. J. D. JACOBS

Mr. Joseph David Jacobs, solicitor, of Moorgate, London, E.C.2, died on 2nd August at the age of 74. He was admitted in 1906 and was a Freeman of the City of London.

MR. J. PORTER

Mr. James Porter, J.P., retired solicitor, of Conway, died on 12th August, aged 85. Admitted in 1886, he was clerk to the justices at Conway, a past president of the Chester and North Wales Law Society, a former Mayor of Conway and a Freeman of the town. He retired in 1934.

MR. W. H. SANDERS

Mr. William Henry Sanders, solicitor, of Bloomsbury Square, London, W.C.1, died on 19th August. He was admitted in 1900.

MR. J. E. TOMLEY

Mr. John Edward Tomley, C.B.E., solicitor, of Montgomery, has died at the age of 77. Admitted in 1901, he was Clerk to Montgomery Borough Magistrates. He was at one time President of the National Association of Insurance Committees for Wales and was a governor of the Church of Wales and of the Welsh National Memorial Association.

MR. O. J. WILLIAMS

Mr. Owen Jones Williams, solicitor, of Caernarvon, died on 17th August, aged 63. He was admitted in 1913.

MR. R. A. WILSON

Mr. Reginald Arthur Wilson, solicitor, of Castleford, has died at the age of 64. He was admitted in 1908.

Wills and Bequests

Mr. W. B. Barber, retired solicitor, formerly of Nottingham, left £54,568 (£54,500 net).

Mr. T. A. Scrivener, solicitor, of Newton Abbot, left £39,717 (£35,013 net).

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